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No. 219

In the Supreme Court of the United States.

OCTOBER TERM, 1958

UNITED STATES OF AMERICA, PETITIONER

v.

FRANK BREWSTER AND NUGENT LAPOMA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the District of Columbia Circuit, reversing the contempt convictions against the respondents.

OPINIONS BELOW

The opinions of the Court of Appeals (B. 528a–534; L. 480–481; App., *infra*, pp. 35–41, 43–44)[1] have not yet been reported. The opinion of the District Court in the *Brewster* case (B. 31–49) is reported at 154 F. Supp. 126.

[1] The record lodged herewith includes the Brewster joint appendix in the Court of Appeals, designated "B."; the Brewster trial transcript referred to as "B. T."; the LaPoma joint appendix designated as "L."; and the LaPoma trial transcript referred to as "L. T.".

JURISDICTION

The judgments of the Court of Appeals in both *Brewster* v. *United States* and *LaPoma* v. *United States* were entered on April 15, 1958, and petitions for rehearing *en banc* were denied on May 27, 1958 (B. 535–543, 570; L. 482–484, 486; App., *infra*, pp. 41–43, 44–45). On June 27, 1958, by timely order of the Chief Justice, the time within which to petition for certiorari was extended to and including July 26, 1958.

QUESTION PRESENTED

Whether, in the course of its investigation into labor union financial reports filed with the Department of Labor under the Taft-Hartley Act and into the tax exempt status of unions filing false reports, the Investigating Subcommittee of the Senate Committee on Government Operations, under its authority to study "the operation of Government activities at all levels with a view to determining its economy and efficiency", was empowered to subpoena union officials and inquire of them as to the authenticity and veracity of reports which they had filed with the Government agencies.

STATEMENT

On March 18, 1957, separate indictments were filed in the United States District Court for the District of Columbia against respondents Frank Brewster (31 counts) and Nugent LaPoma (5 counts) charging that each had violated 2 U. S. C. 192 in that, having been subpoenaed to testify before the Senate Permanent Subcommittee on Investigations of the Com-

mittee on Government Operations, and directed to bring books and records relevant to the matter under inquiry before the Subcommittee, each refused on January 19, 1957, to produce the subpoenaed records, to identify pertinent documents then in the Subcommittee's possession, and to answer pertinent questions put to them at the hearing (B. 1–7; L. 1–3).

Each of the respondents, having waived jury trials, was tried separately by the court,[2] and each was convicted as charged (B. 31–49; 523). Brewster was sentenced to a year imprisonment and a $1,000 fine on each count, the sentences to run concurrently. Payment of the fine was postponed pending appeal (B. 528).

LaPoma was sentenced to 30 days imprisonment and a $1,000 fine on each count, to run concurrently. Imposition of his prison sentence was suspended and he was placed on probation for 1 month; payment of the $1,000 fine was postponed pending appeal (B. 528).

Judge Sirica wrote an opinion in the *Brewster* case holding "beyond any doubt" that the Subcommittee had jurisdiction (B. 31–49, 40; 154 F. Supp. 126, 133). In reversing, the Court of Appeals for the District of Columbia Circuit did not make any distinction as to the questions which Brewster refused to answer. Instead, it broadly held that the Committee's authority to study economy and efficiency of government operations does not authorize investigation of persons or entities, in this case labor unions, who are subject to

[2] Brewster before District Judge Sirica, and LaPoma before District Judge Schweinhaut.

Federal regulation, and that no inquiry whatever may be made of the union officials. Justice Reed, sitting by designation, dissented, finding that the opinion of the court constituted an invasion of the legislative prerogative and would improperly hamper Congressional investigations (B. 528a–531; App., *infra*, pp. 35–41). The *per curiam* reversal in *LaPoma* was based on the court's decision in *Brewster* (L. 480–481; App., *infra*, pp. 43–44).

Since both cases involve precisely the same question, and derive from the same hearing before the Senate Subcommittee on Investigations, they are combined in this petition for a writ of certiorari.

The pertinent material concerning the origin and jurisdiction of the Permanent Committee on Government Operations and its Investigating Subcommittee, and a chronology of the events culminating in respondents' contempt convictions, may be summarized as follows:

A. The committee

1. Section 102 of the Legislative Reorganization Act of 1946, 60 Stat. 814–820, amended Rule XXV of the Senate Rules which created and defined the jurisdiction of the Standing Committees of the Senate. Major aims of this legislation were to simplify the standing committee system (15 instead of 33), and tie each Committee to important areas of public policy and administration; to coordinate committee work in both Houses; to establish more direct and intimate contact between each committee and the executive department under its surveillance; and by such modernization to avoid the necessity of establishing special investigatory committees (B. 62–69; L. 7–13; S. Rep.

No. 1400, 79th Cong., 2d Sess.; H. Rep. No. 1011, 79th Cong., 2d Sess.).

Section 102 (1) (g) of the Act (60 Stat. 816) provided for the Standing Committee on Expenditures in the Executive Departments, and granted it, in pertinent part, the following juridiction:

* * * * * *

(2) Such committee shall have the duty of—

* * * * *

(B) studying the operation of Government activities at all levels with a view to determining its economy and efficiency;

(C) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government;

* * * * *

The Senate debates introduced into evidence at respondents' trials indicate that this Committee was meant to be empowered with extensive responsibility and authority (see B. 289–292; B. T. 648–669; L. 419–432). For example, Senator La Follette, the principal proponent of the 1946 legislation, agreed with the comment of Senator Hill made during the 1946 debate that (B. 290):

> * * * the bill will give to that committee [Expenditures in the Executive Departments] a jurisdiction and a responsibility and an emphasis which it certainly has not had in the past, and will make it a committee which will look into many matters and will cover many subjects which it has not been able to handle in the past. By virtue of handling them, it will eliminate the need we have had in the past for some of the special committees.

Senator Aiken, an early chairman of the Committee, was of the opinion that S. Res. 189, 80th Cong., 2d Sess., introduced by him on January 14, 1948, would consolidate in the Committee the work of the then Special Committee to Investigate the National Defense Program, expiring January 31, 1948, and the Surplus Property Subcommittee of the Expenditures Committee (B. 300–302; see also B. 293–296).[3]

2. The Investigating Subcommittee was created on February 26, 1948, at an organizational meeting of the parent Committee. It was to consist of seven members and was authorized to proceed with any investigation within the jurisdiction of the full Committee. The minutes of this meeting contain the following entry as to the jurisdiction of the new Subcommittee (B. 59–63, 303–305):

> 2. The principal function of the subcommittee shall be to investigate complaints and information coming to its attention involving the possible existence of fraud, malfeasance, misfeasance, collusion, corrupt or unethical practices and waste and extravagance in transactions, contracts, and activities of the Government or of governmental officials or employees.

On March 3, 1952, the Senate voted to change the name of the Committee on Expenditures in the Executive Departments, to the Committee on Government

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[3] While the resolution itself did not provide for the consolidation suggested by Senator Aiken, it authorized the Committee on Expenditures in the Executive Departments, or any subcommittee thereof, to expend $125,000 of its new funds during the second session of the 80th Congress in carrying out its duties under Section 102 (i) (g) (2) (B) of the 1946 Act.

Operations. This was called by Senator Hayden, who introduced the resolution, "a shorter and better title". (B. 297–300; 98 Cong. Rec. 1701–1702).[4] On February 16, 1956, the Senate passed S. Res. 188, 84th Cong., 2d Sess., authorizing the Committee, or any subcommittee thereof, to expend $197,083.34 in carrying out its functions under the Legislative Reorganization Act of 1946 and under Rule XXV of the Standing Rules of the Senate (B. T. 124–125; 102 Cong. Rec. 2666). On January 14, 1957, at a meeting of the full Committee on Government Operations, with a majority present, "[i]t was reaffirmed that the Senate Permanent Subcommittee on Investigations is authorized to continue to conduct such investigations as its parent Committee, the Committee on Government Operations, is empowered to conduct under the Legislative Reorganization Act of 1946" (B. 57–59; L. 114k–114l).[5]

B. The investigation

1. Commencing in 1955 and extending into 1956, the Subcommittee investigated the procurement of

[4] This change in name was unanimously recommended by the members of the Expenditures Committee. Senator McClellan, Chairman of the Committee, believed "that the proposed new title would be more accurate in defining the purposes for which the committee was created and in clearly establishing the major purpose it serves" (B. 298–299).

[5] During Robert F. Kennedy's tenure as counsel of the Subcommittee (1955–1957) it had investigated, *inter alia*, the "General Zwicker matter"; the building of grain bins in Pakistan; East-West trade; and conflict of interests cases involving government functionaries (B. 284). The Subcommittee has also conducted investigations respecting the U. S. Information Service (see B. 39–40).

supplies by the military and as a result uncovered information revealing a nationwide problem with respect to labor racketeering[6] (B. 54, 83–85; L. 402). Mr. Kennedy, who was Counsel for the Senate Subcommittee on Investigations during this investigation, testified at the *Brewster* and *LaPoma* trials that the procurement investigation, initiated in New York City in 1955, revealed that Local 102 of the International Ladies Garment Workers Union was involved in dealings with non-union shops run by gangsters and racketeers. Further investigation revealed the existence of "paper locals"[7] among teamster locals in the New York area, extensive misuse of union funds, and the fact that financial reports required to be filed by various locals with the Department of Labor under Section 9 (f) of the Labor Management Relations Act of 1947 (Taft-Hartley), 61 Stat. 136, as amended, 65 Stat. 601, were inaccurate and false (B. 123–124, 195–196, 473–478; L. 144–148).

Inquiry made of the National Labor Relations Board and of the Department of Labor revealed that these agencies felt that they could do nothing if these financial reports were false, since the Act was complied with as long as they were filed. The Subcommittee was aware that such filing was required under

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[6] Defined by subcommittee counsel Robert Kennedy as: (1) collusion between labor and management; (2) misuse of union funds; (3) misuse of welfare and pension funds; (4) extortion; (5) use of terrorism; (6) depriving union members of their democratic rights by fear and terrorism; and (7) outsiders "taking over" a labor union to the detriment of the union members (B. 122).

[7] One that has no members and is created for purposes of extortion (B. 476).

the Act, and that labor unions enjoyed an exempt tax status. By November 8, 1956, in the course of this investigation, and prior to the investigation into the Western Conference of Teamsters, the Subcommittee had obtained from the Department of Labor the registration certificates of various New York locals—including Teamster locals—which had been filed pursuant to the requirements of the 1947 Act (L. 29–42).

Because of the close ties found to exist between the union officials under investigation in New York and high officials of the Teamster Unions, and the disclosure of extensive misuse of union funds by union officials which was not reflected in these financial reports, the Subcommittee decided to broaden its investigation. In November and December 1956, it conducted an investigation on the West Coast [8] (L. 144–148, 164–167; B. 123, 195–196, 225–228, 276, 483–489). The primary aim of the West Coast investigation was to determine whether, in that area as well, there was misuse of union funds, whether false financial reports were being filed with the Department of Labor, and whether remedial legislation was needed to increase the efficiency and economy of the Government activities involved (B. 124–125, 195–196).

The West Coast investigation revealed information indicating that respondent LaPorta had used for personal purposes the funds of Teamster Local 474.

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[8] Mr. Kennedy stated the New York investigation in 1956 was postponed because of the acid throwing incident involving Victor Riesel and the consequent indictment of Johnny Dio (B. 230).

Seattle, Washington, and that respondent Brewster had used the funds of Teamster Joint Council 28 of Washington and those of the Western Conference of Teamsters[9]—in fact, that much the same situation obtained as in the New York area (B. 191–192, 196, 209–210, 212–213; L. 144, 148–150, 153–154, 157, 164, 175). As a result of further inquiry made of the National Labor Relations Board early in January 1957, and in discussions with executives of that body and of the Department of Labor, the Subcommittee was informed that the Western Conference of Teamsters did not file financial reports, and that the law was unclear as to whether such an organization had to file (B. 125, 196, 369–371; L. 170–171).

The investigators also discussed with officials of the Internal Revenue Service misuse of union funds by Teamster Union officials, and its effect upon the unions' tax exempt status. The Service indicated its interest in particular instances of misuse since the annual information returns filed by unions received a very limited perusal by the Service due to a manpower shortage. The investigators were further informed that the Service had authority to revoke a tax

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[9] As Mr. Kennedy explained it, the makeup of the Teamsters organization consists of an International Brotherhood, the Eastern, Southern, Central and Western Conferences, joint councils and local unions. The Western Conference of which Mr. Brewster was Chairman comprises the joint councils of 11 western states. He is also the president of Joint Council 28, State of Washington, and President of Teamsters Local 174, Seattle, Washington. Mr. LaPoma is Secretary-Treasurer of Local 174 (B. 124–125, 440; L. 151–152, 446–447).

exemption if the union refused to turn over its books and records, but it had never done so (B. 76–81).[10]

In conjunction with this broad investigation into teamster operations on the West Coast, two subpoenas were issued on December 15, 1956, to Mr. Brewster in his capacity as Chairman of the Western Conference of Teamsters, and as president of Joint Council No. 28, directing him to appear before the Subcommittee in Washington, D. C., on December 27, 1956, to testify to what he knew relative to the matter under investigation and to produce the records of these two organizations for the period January 1, 1951, to December 31, 1955, "including cash receipts and disbursements, canceled checks, general ledgers, bills and invoices, bank statements, canceled checks, check stubs, correspondence files, memorandums and minutes of meetings" (B. 137–138). The date of Brewster's appearance was subsequently postponed until January 15, 1957 (B. 135–136).

Similarly, on December 15, 1956, Mr. LaPoma was subpoenaed to testify before the Subcommittee in Washington, D. C., on January 15, 1957, in his capacity as Secretary-Treasurer of Local 174, and

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[10] The policy of the Service was sought by the Subcommittee in this connection in view of the Ninth Circuit reversal, on November 8, 1956, of a district court order for Local 174 to produce its financial records for inspection by the Internal Revenue Service in an investigation auditing the income tax returns of Brewster for alleged misappropriation of the union's funds. The decision of the Court of Appeals was grounded on the theory that the books and records must be relevant to the tax liability, a question to be determined in the first instance at a hearing before the district judge. *Local 174, Etc.* v. *United States*, 240 F. 2d 387 (C. A. 9).

directed to bring with him the records of that organization from January 1, 1951, to December 31, 1955 (L. 385).

2. Early in January 1957, and prior to the scheduled hearings in Washington, D. C., Committee Counsel Kennedy reported to Senator McClellan, Chairman of the Subcommittee, and of the parent standing committee, the results of the West Coast investigation. In this discussion, it was recognized that some of the information turned up—apart from information as to possible concealment from the Labor Department and the Internal Revenue Service of union funds by teamster officials—dealt with facets of labor corruption which might exceed the jurisdiction of the committee (B. 225, 276–277; L. 177). In addition, the chairman was informed that Mr. Bassett, the attorney for Brewster and LaPoma, had, in his conversations with Mr. Kennedy, questioned the Subcommittee's jurisdiction to make any inquiries whatever of his clients (B. 118–120; L. 177).

In light of these considerations, Senator McClellan introduced on January 7, 1957, a resolution (S. Res. 14) seeking ratification from the Senate for the carrying through by the Permanent Subcommittee on Investigations of a thorough investigation into "labor irregularities on Government operations * * *" (B. 71–74, 72, 83–86; L. 17–24). On the same day, Senator Ives, Chairman of the Committee on Labor and Public Welfare, also introduced a resolution (S. Res. 13) seeking authorization for his Committee "to make a comprehensive study and investigation of the penetration of criminal elements into * * * organized labor * * *" (B. 70, 81–83; L. 14–16, 25).

At a meeting, on January 10, 1957, of the Investigations Subcommittee, these two resolutions were discussed. Senator McClellan advised the members of the Committee that in some areas it had jurisdiction but in others "it would be on the borderline", and that he had asked for additional authority so that no question could be raised. He further stated that Senator Ives had advised him that "he thought probably both Committees had jurisdiction" but that since he had offered a similar resolution last year,[11] he thought he should offer it again. Counsel Kennedy then explained the development of the West Coast investigation to the Committee members (see *supra,* pp. 9–10) and noted the jurisdiction of the Subcommittee, first, in relation to the tax exempt status of unions and whether that status was proper in view of misuse of funds by union officials, and, second, as to improvements in the filing requirements which were being abused by union officials (B. 54–56; L. 401–419). Thereafter, the full Committee met on January 14, 1957, and, as noted, *supra,* reaffirmed the Subcommittee's power to hold such hearings as its parent Committee was authorized to conduct (B. 57–59; L. 114k–114l). On January 16, 1957, the Subcommittee commenced its hearings on the subject: "Violation or Non-Enforcement of Government Laws and Regulations in the Labor Union Field" (B. 309; L. 327).[12]

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[11] S. Res. 304, 84th Cong., 2d Sess., introduced July 5, 1956 (B. 69).

[12] A week or so after the appearances of Messrs. Brewster and LaPoma before the Subcommittee, Senator McClellan, along with Senator Ives, sponsored S. Res. 74, 85th Cong., 1st Sess., creating the Select Committee on Improper Activities in

C. The hearings

1. The subject under inquiry

The Subcommittee hearings commenced in the morning of January 16, 1957. At the outset, Chairman McClellan read a statement reviewing the information obtained through the Subcommittee's investigation and delineating the purpose of the inquiry (B. 310–313). This included the following:

> In the passage of the Taft-Hartley law in 1947, the Congress undertook to protect union members, the general public, and the Government against certain types of racketeering, including the misuse or misappropriation of union funds by dishonest union officials. The law provides that there shall be a registration of labor organizations and a full and accurate report by such organizations of their revenues and expenditures and of all compensation and allowances over and above $5,000 paid to and received by labor union officials and union employees from dues collected from members or from other union funds.
>
> Today, the subcommittee will hear officials from the Department of Labor, the National Labor Relations Board, and the Treasury Department. We shall make inquiry of them as to the adequacy of existing statutes and their

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the Labor Management Field (B. 75–76). At that time, Senator McClellan observed, as to the instant hearings, that "we undertook to confine [them] to the area in which I felt confident, beyond any doubt in my own mind, that the subcommittee had jurisdiction" (103 Cong. Rec. 1262). In the same debate, Senator Ives commented as to these hearings: "It is one over which his committee [the Subcommittee on Investigations] has absolute jurisdiction; I have never questioned its jurisdiction" (103 Cong. Rec. 1263).

present rules and regulations to enable them to administer the law efficiently. Also, we shall inquire whether there should be any modifications or changes in existing law to assist them in determining the adequacy, accuracy, and truthfulness of financial reports and other information required to be supplied by labor unions and labor union officials.

We want to determine whether agencies of Government are able to and have the authority to ascertain whether such information contained in such labor union registrations, financial reports, and the reports of the labor union officials are accurate, true or false.

The subcommittee is aware of recent court decisions which may sharply limit and restrict the right of Government agencies such as the Treasury Department, the Bureau of Internal Revenue, the Department of Labor, and the National Labor Relations Board to investigate and determine the accuracy, truthfulness or falseness of various reports the unions and their officials are obligated to file. We intend to ascertain whether, in view of these court decisions, the responsibilities of the Government in this area under existing law are being administered efficiently and economically. We also want to know whether legslation in this area is necessary to improve the efficient and economic administration of existing law or if modification or change is required to promote greater efficiency and economy.

Conferences with representatives of the Bureau of Internal Revenue indicate the need for strengthening legislation to enable the Bureau to investigate labor organizations

which, under the law, are tax exempt. The Bureau of Internal Revenue should have the authority to determine whether any of the labor unions' funds and particularly, dues collected from union members, are used by union officials for personal gain and profit. We also want to know whether and why such tax exempt labor union organizations can refuse to allow either the legislative or the executive branch of the Government to examine their books and records. The Government should be permitted to establish whether such organizations come within the purview of the law granting it a tax exempt status.

This subcommittee proposes to determine whether, after such refusal, the continuance of a tax exempt status is warranted, or if such tax exempt status should be forfeited by such refusal.

In the course of our previous investigations and this present preliminary inquiry, we have acquired information that clearly indicates that there is labor racketeering in the area of Government procurement resulting in increased cost to the taxpayers for commodities produced; that false reports have been filed by certain labor organizations with respect to their expenditures; that compensation and allowances paid by certain unions to their officials have not been accurately and truthfully reported; that there has been manipulation of accounts involving dues collected from their members, as well as welfare funds; also other irregularities and improprieties have come to the attention of the subcommittee.

It is, therefore, our purpose to develop facts and information that will enable the Federal

> Government to improve its efficiency and strengthen its economy. In this effort we have every reason to expect the wholehearted cooperation and support of the leaders and members of labor organizations whose actions and practices conform to the law, who observe the proprieties of proper labor-management relations, and who are interested and desire to cooperate in improving the efficiency and economy of Government operations.
>
> * * * * *

Testimony was then adduced from Mr. Boyd Leedom, Chairman of the National Labor Relations Board (B. 313–340; L. 331–357), who pointed out that in order for a union to avail itself of the services of the Board in the adjudication of charges of unfair labor practices it must have filed, pursuant to Section 9 (f), (g) and (h) of the Labor Management Relations (Taft-Hartley) Act of 1947, memoranda with the Secretary of Labor concerning its financial activities, compensation of officers, organizational information, and its officers must file non-communist affidavits. He observed, however, that in actual practice this filing requirement was a matter of form; because of the way the Act was written and as a result of an opinion by the Supreme Court [13] there was no Board authority to examine the reports or in any way to determine

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[13] In *Leedom* v. *International Union of Mine, Mill & Smelter Workers*, 352 U. S. 145, this Court held that the National Labor Relations Board was not empowered to investigate the truth or falsity of a non-communist affidavit nor may it decree a union's decompliance with Section 9 (h) because such affidavit was untrue. The exclusive remedy under the Act is a criminal sanction against the guilty officer.

whether they were true or false. Mr. Leedom believed that no executive official had any authority to check the accuracy of the reports. When the reports are filed with the Department of Labor, it mails a "post-card" certification to the union which forwards a portion of it to the National Labor Relations Board, which, upon receipt of such certification, makes available the services of the Board to the certified union. Neither agency goes into the veracity of the reports. Mr. Leedom thought that this inability to examine the reports could result in frauds being perpetrated on the government without adequate remedy.

He further testified that the Western Conference of Teamsters had never filed reports and it was not clear from the Act whether such "intermediate organization" fell within the scope of the Act's registration requirements, despite the fact that the Conference actively controls all the teamster locals in 11 western states. In sum, he agreed that the law contained "loopholes and areas that need clarification" (B. 337; L. 354) and that "if it is the desire of Congress to achieve the objective of denying the services of the Labor Board to unions who do not make honest and truthful revelations as to their financial activities, then the law isn't adequate to reach that" (B. 338; L. 355).

Secretary of Labor Mitchell next testified and affirmed Chairman Leedom's interpretation of the Taft-Hartley Act to the effect that there was no authority to determine whether a financial statement was false and inaccurate. In fact, he testified, even if he should personally have knowledge that particular reports

were false, he had no authority to deny certification on that basis. He further stated that, although criminal penalties were prescribed, to the best of his knowledge no union or union official had ever been convicted for the filing of false financial reports. Additionally, he discussed the requirement that these reports be disseminated to union members and the harmful effect upon such members if they were untrue. He agreed that false reports worked an imposition on the Government and that it was inherent in the Congressional purpose that they be accurate. He noted that the Labor Department was reviewing the Act, including Section 9 (f), for the purpose of determining what amendments were necessary (B. 340–356; L. 357–372).[14]

Mr. Justin F. Winkle, Assistant Commissioner of Internal Revenue, and Mr. John P. Barnes, Chief Counsel, Internal Revenue Service, then were called and testified concerning the tax exemption status of labor unions. The crux of their testimony was that, while labor unions are tax exempt, the Internal Revenue Service has a right to audit their books, but due to the extreme work load and manpower shortage such auditing is very slight. They stated that a condition to tax exemption was that no portion of the union's net income inure to any member; that they would wish to examine a labor union's records if an annual

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[14] S. Res. 94, 85th Cong., 1st Sess., introduced on May 17, 1957, was a joint resolution to the effect that Secretary Mitchell's testimony before the Subcommittee showed that he was requesting Congress to provide the authority to make available to the public the forms required to be filed by labor unions under the Taft-Hartley Act (B. T. 704–705).

financial report was fraudulent; that the Ninth Circuit, however, had limited their authority by holding that the District Court must first determine the relevancy of these reports to the tax investigation (see *supra*, p. 11, fn. 10); that, in the light of this decision the more stringent remedy of revocation of tax exemption would be considered; that such a procedure would in any event be seriously considered if it were found that the net earnings of unions were pocketed by officials; and that the Service would welcome any specific information on that subject (B. 356–366; L. 372–382).

2. Brewster's contempt

Immediately after the testimony of the government officials discussed above, respondent Brewster was called upon to testify. He stated that he had received a copy of the Chairman's statement made at the outset of the hearing (*supra*, pp. 14–17), that he had read it, was familiar with it, and had no questions concerning its content (B. 134).[15] He then read a prepared statement to the effect that he did not intend to produce the records requested by the subpoenas, on the grounds (1) that "the subcommittee is proceeding in excess of its lawful authority" and (2) that the subpoenas are so broad as to constitute an unreasonable search and seizure in violation of the Fourth Amendment (B. 138–139). After some questioning of Brewster and his counsel (B. 139–145), the witness was temporarily dismissed to afford him

[15] Before the hearing had commenced, Mr. Kennedy had given several copies of this statement to Mr. Bassett, the attorney for Messrs. Brewster and LaPoma (B. 495, 499).

the opportunity to reconsider his position and to return the following morning. His next appearance was postponed until January 19, 1957.

At the January 19 hearing, Mr. Brewster persisted in the position he had taken earlier and refused to answer all questions put to him. His sole basis for refusal was that the Subcommittee was acting outside its jurisdiction; additionally, as to questions relating to his failure to produce the subpoenaed books and records, he relied on the claim that the subpoenas were too broad (B. 164–187).

His refusals to answer, which were charged in the indictment, are grouped in categories in the opinion of District Judge Sirica (B. 33), substantially as follows (B. 1–7; 153–187):

(a) Eleven counts relate to reports filed with the Secretary of Labor by Joint Council 28 and Local 174 of the Teamsters. Mr. Brewster refused to examine or testify to the verity of the reports; to state whether they concurred with reports filed with the Internal Revenue Service; or otherwise to identify his own and other signatures appearing on said documents (Counts 2–4; 9–11, 12, 13, 16, 17, 19).

(b) Seven counts involved inquiries into Mr. Brewster's and Mr. Beck's reported personal use of union funds, whether he knew the reporting requirements of union officials' salaries, and whether he considered false reporting a fraud against union members (counts 18, 20, 21, 22–25).

(c) Seven counts involved questions as to whether he believed the laboring man should know how union

funds are spent, and his intent and purpose in challenging the authority of the Subcommittee (counts 5–8, 26, 27, 30).

(d) Three counts involved questions concerning instructions circulated among officials of the International Brotherhood of Teamsters that no disciplinary action was to be taken against any official who invoked his constitutional privilege before the Subcommittee (counts 14, 15, 31).

(e) Two counts charged Brewster with failure to produce the subpoenaed documents of Joint Council No. 28, and of the Western Conference of Teamsters (counts 28, 29).

(f) Count 1 charged his refusal to state his occupation.

3. LaPoma's contempt

Respondent LaPoma was called to testify on January 16, 1957, immediately after Mr. Brewster's appearance. He also stated that he had read the Chairman's statement (*supra*, pp. 14–17) and understood the purpose of the investigation and the Committee's interest (L. 386). Like Brewster, he then read a prepared statement explaining that he had failed to produce the subpoenaed records of Local 174 because the inquiry was outside the scope of the Subcommittee's authority and because the subpoena was too broad (L. 387–388). He was afforded an opportunity to reconsider his decision and next appeared before the Subcommittee on January 19, 1957 (L. 395).

At this hearing, he again refused to answer all questions on the grounds originally stated (L. 317–325). These refusals, which became the subject matter of the five-count indictment against him, are as follows (L. 1–3, 317–325):

(a) Refusal to produce the subpoenaed records of Local 174 (count 1).

(b) Refusal to answer whether he intended to produce the subpoenaed papers, despite his knowledge of the purpose of the investigation and of the opening statement made by the Chairman (counts 2 and 3).

(c) Refusal to identify documents filed with the Department of Labor by Local 174 and to identify his signature thereon (counts 4 and 5).

On February 7, 1957, the Committee on Government Operations unanimously voted to request the Senate to hold Brewster and LaPoma in contempt (L. 114e–114j). On February 19, 1957, by voice vote without objection, the Senate voted the contempt citations (S. Res. 92 against Brewster, and S. Res. 89 against LaPoma; 85th Cong., 1st Sess.; 103 Cong. Rec. 2227–2229).[16]

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[16] Contempt citations for similar refusals to testify before the Subcommittee were voted against Einar O. Mohn, vice-president of the International Brotherhood of Teamsters (S. Res. 91; 103 Cong. Rec. 2229) and Harry Reiss, administrator of the welfare fund of Teamster Local No. 227 (S. Res. 90; 103 Cong. Rec. 2229). Following the creation of the Select Committee on Improper Activities in the Labor Management Field, Mr. Brewster testified before that Committee and produced the requested books and records, on March 15, 19, 20–22 (B. 448–450).

REASONS FOR GRANTING THE WRIT

I

The ruling of the Court of Appeals severely restricts the inquiry power of the Investigating Subcommittee of the Senate Committee on Government Operations—the chief investigating arm of the Senate. Extending far beyond the facts of this particular case, the decision unduly narrows the Subcommittee's proper scope and should be reviewed, among other reasons, because of its direct effect on that significant agency of the Congress.

1. The Investigating Subcommittee, in studying the efficiency of government operations, had in its possession financial reports filed by unions with the Department of Labor pursuant to law. It had testimony of officials of the Department of Labor and of the National Labor Relations Board that, under the existing law as they understood it, those departments had no authority to question the verity of the reports or to take action if the reports were false. The Subcommittee also had reason to believe that the reports were not accurate and truthful. Yet, under the ruling of the Court of Appeals, it was no part of a Senatorial inquiry into the efficiency of government operations to discover from the unions' representatives whether there was in fact considerable falsity in the reports filed as a basis for determining whether the problem of falsity required legislative solution, or whether further action could be taken under existing law by the executive agencies. Similarly, the Subcommittee knew that unions were being given a tax exempt status, and

that the Internal Revenue Service felt that it did not have sufficient manpower to determine whether such exempt status was proper. Yet, under the decision below, a study of the efficiency of government operations would not encompass an inquiry directed to a union as to whether that union should in fact have been held exempt under the statute.

The opinion of the majority below thus holds that the Subcommittee's power to investigate the administration of federal statutes does not extend to inquiries directed to the very persons regulated by the legislation, regardless of the closeness of the inquiry to the subject matter regulated and to the actual operation and working of the statutory regulation. For example, under the opinion of the Court of Appeals, it would be no part of a study of the efficiency and operation of the tax laws to determine from corporation officers whether a particular corporate tax exemption would result in unduly large surpluses for a particular group of corporations. Nor would it appear to be proper (under the decision) for the Subcommittee, studying military procurement, to query Government contractors as to whether they padded their cost estimates or paid commercial bribes. Apparently the only witnesses the Subcommittee could properly call to aid it in its investigations would be government officials or third persons unconnected with the regulated activity.

2. This limiting construction of the Subcommittee's charter is plainly contrary to the true scope of its authority as evinced by the clear language of the grant (*supra*, p. 5) and by its history. The "economy" and

"efficiency" of various governmental activities—regulatory, procurement, military—often cannot be appraised and evaluated without discovering, from the individuals who deal with the Government, the nature and character of those dealings—the truth or falsity of reports and representations, the measure of disclosure, the scope of compliance with regulations and requirements, illicit transactions, the actual results of the regulation and whether or not it is successful, etc. All laws operate in and on particular factual situations, and the efficiency of a law and its administration cannot be divorced from its actual operation and from the underlying facts which must be gathered from their basic sources.

Certainly, the power and the actual practice of administrators with respect to reports filed with government departments and tax exemptions conferred by a government department cannot be properly appraised without considering the factual situation resulting from the operation and administration of those particular laws. If Congress is to consider modifying the Taft-Hartley Act's reporting requirements or the Internal Revenue Code's exemption sections, it must know how those provisions are now operating in fact, *i. e.*, whether they are operating efficiently as contemplated by Congress. And in order to make that judgment (with which the Investigating Subcommittee is initially charged on behalf of the Senate) the Subcommittee is empowered to gather the facts from the persons most likely to have them in their possession—such individuals as Brewster and LaPoma, the unions' representatives.

As we view it and as the Subcommittee views it, whether an investigation be of the filing of false union reports, or of corporate tax structure, or of military procurement, the Investigating Subcommittee, under the proper construction of its grant of authority, is plainly authorized to question those directly concerned in the particular governmental field, on matters relating to efficient government operation in that field, whether those individuals be government personnel, union officials, or corporate representatives. If the Subcommittee had jurisdiction to call private individuals to testify in its "5 percenter" investigation (*Maragon* v. *United States*, 187 F. 2d 79 (C. A. D. C.), certiorari denied, 341 U. S. 932), and in its investigation of the United States Information Service (*United States* v. *O'Connor*, 135 F. Supp. 590 (D. D. C.), reversed on other grounds, 240 F. 2d 404 (C. A. D. C.)),[17] it surely had jurisdiction to question union officials in the course of its investigation into the efficiency of the filing of Taft-Hartley Act reports with the Labor Department, and the claims of unions for income tax exemptions filed with the Internal Revenue Service.[18]

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[17] *United States* v. *Kamin*, 136 F. Supp. 791 (D. Mass.), is plainly distinguishable since it involved an investigation of a *private plant* having a Government defense contract, and not, as here, the direct impact of particular regulatory provisions and the filing of reports with government agencies.

[18] For other instances of comparable investigations by the Subcommittee, see the Statement, *supra*, pp. 7–8; 7, fn. 5. The Subcommittee is the main investigating arm of the Senate. Before its activation in 1948, Senator Wiley, then Chairman of the Senate Committee on the Judiciary, disclosed that he understood that the main committee "will have created in its juris-

3. The majority below misinterpreted the Subcommittee's position as attempting to transform *all* the activities of persons or entities regulated by any government agency into "Government activities". The court said (App., *infra*, p. 39):

> We have grave doubts that, merely because unions are required to file reports, their activities or the misuse of their funds or the concealment of such use become "Government activities". We would have the same doubts about whether the requirement that corporations file tax returns make all corporate affairs "Government activities".[19]

No such position is involved in this case. The Subcommittee recognized that not all union activities,

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diction an investigational subcommittee to handle matters of investigation for all of the standing committees. * * * I should like to observe that this appears to be a businesslike step since most of the standing committees, including the Judiciary Committee, are unequipped to handle investigations". And Senator Ferguson, then Chairman of the Subcommittee on Investigations, also said, in 1948, that the committee "has undertaken to organize a staff so that the committee may take on the burden of investigations for the Senate". Sen. Doc. No. 51, 82d Cong., 1st Sess., July 10, 1951, *The Organization of Congress—Some Problems of Committee Jurisdiction*, p. 34.

[19] The court goes on to say (App., *infra*, p. 39):

> According to the logic of appellee's view, the Committee would have authority, under its duty to study the "economy and efficiency" of "the operation of Government activities," to investigate all persons and companies subject to laws dealing with internal revenue, transportation, communications, banking, agriculture, shipping, subversive activities, immigration, health, international relations, etc., etc. This, for all practical purposes, would give the Committee on Government Operations jurisdiction to investigate *virtually every activity engaged in by every person in the land.* * * *". (Emphasis added.)

however properly the subject of legislative investigation, were within the scope of the government operations committed to this Subcommittee's jurisdiction (see the Statement, *supra*, pp. 12–13). The Subcommittee was careful to limit its inquiry to those union activities directly related to the functioning of the Taft-Hartley Act's reporting provisions and to the claimed tax exemptions. There was no attempt to investigate "every activity" engaged in by respondents or their unions, or to equate all union affairs with "Government activities". The Subcommittee kept within the bounds of its charter. See the Statement, *supra*, pp. 12 *ff*.

The opinion below also suggests that the Senate itself had doubt as to the scope of the Subcommittee's authority because of its creation of the Select Committee on Improper Activities in the Labor or Management Field (App., *infra*, p. 40, fn. 7). This is answered by the legislative history of the creation of the Select Committee which clearly indicates that it was to cover union-management conditions not relating to the efficient operation of government activities and hence not within the compass of the Subcommittee's authority (see the Statement, *supra*, pp. 13–14, fn. 12; 103 Cong. Rec. 1261–1265). The Select Committee was created because it was realized that there were areas of union corruption that would not fall within a study of the operations of the Government. Its creation does not mean that the Senate felt that the matters at issue here—particularly the questions relating directly to the veracity of the reports filed with the Labor Department and the bases for tax exemption—were outside

the scope of the Subcommittee's power. To the contrary, by citing respondents for contempt, the full Senate indicated that it thought the inquiry properly within the jurisdiction of the Subcommittee.[20]

4. This statement of the matter is sufficient, we think, to show the error of the court below and the importance of the problem to the continued functioning of this significant Subcommittee. The rule laid down in the opinion will hamper almost every inquiry undertaken by the Subcommittee and will extend far beyond the instant investigation. The decision, unless reviewed, will represent the law of the District of Columbia Circuit where, necessarily, most of the Subcommittee's investigations take place. Hereafter the Subcommittee will function under the shadow of that ruling. It is therefore important that the questions posed by that decision be resolved at this time, in this proceeding.

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[20] Nor may it validly be urged that respondent Brewster purged himself of his contempt by virtue of the fact that he subsequently testified before the Select Committee. His initial failure to comply with the Subcommittee's order constituted criminal contempt; and his subsequent testimony before the Select Committee was never accepted by the Committee on Government Operations, its Subcommittee, or by the Senate, as a purge of his prior contumacious conduct. At most, his subsequent compliance goes to the severity of punishment to be imposed. *Chapman* v. *United States*, 8 App. D. C. 302, 310–312; cf. *United States* v. *Norris*, 300 U. S. 564, holding that a witness committing perjury before a Congressional committee cannot purge himself of that offense solely by recanting the false testimony at a later stage of the inquiry.

Respondent LaPoma has not testified before the Select Committee.

II

The decision below likewise raises grave general questions as to the extent of judicial supervision of the investigative prerogative of Congress, and should also be reviewed by this Court for that reason.

1. Beyond dispute, a key facet of the proper exercise of the legislative function is the Congressional power to investigate and inform itself. *Kilbourn* v. *Thompson,* 103 U. S. 168; *McGrain* v. *Daugherty,* 273 U. S. 135; *Sinclair* v. *United States,* 279 U. S. 263; *United States* v. *Rumely,* 345 U. S. 41; *Watkins* v. *United States,* 354 U. S. 178. In effect, the decision of the court below goes far to devitalize that power. And it would devitalize it not because it conflicted with the assertion of any personal Constitutional privilege; nor because the Subcommittee was acting without a bona fide legislative purpose, cf. *Kilbourn* v. *Thompson, supra*; nor because there was uncertainty as to the subject matter of the inquiry, *Watkins* v. *United States, supra;*[21] nor to avoid Constitutional questions which would otherwise arise, *United States* v. *Rumely, supra.* Rather, the ruling would hold the investigation invalid solely because the Subcommittee's charter did not spell out explicitly enough for the court the authority to make inquiries of other than government personnel; regardless of the fact that these inquiries dealt with matters which were subject

[21] The opinion below states that "It is conceded that Congress has the power to conduct such an inquiry" (App., *infra,* p. 38). And there has been no claim—nor could there be (see the Statement, *supra,* pp. 14–17, 20–21, 22–23)—that respondents did not know the precise subject matter of the inquiry.

to government regulation and were closely related to efficient government operation.

In order to comply with the broad implications of this decision and yet seek to prevent emasculation of its investigative authority, Congress would seemingly have two avenues of approach open to it. On the one hand, it could endow a committee with such broad authority as to defeat any claim that a particular investigation was not within that committee's jurisdiction. But this could lead to great overlap between committees and might be susceptible to attack on the ground that the empowering resolution was so vague that it did not spell out a legislative purpose, nor inform the witness of the topic under consideration (cf. *Watkins* v. *United States*, 354 U. S. 178, 201–211). On the other hand, Congress could define minutely the exact functions that the committee is to perform and the exact persons it could call before it. This would require that Congress forecast accurately the specific legislative needs and the precise area of investigation required to meet such needs, before they are known and before any investigation is begun; or, alternatively, that Congress constantly carve out a committee's jurisdiction on a piece-meal basis as immediate conditions dictate. Under neither method could Congress grant a committee investigative power coextensive with the legislative purpose it is meant to serve in the conditions of modern legislation.

In our opinion, given a valid legislative purpose a committee's investigative jurisdiction should be viewed with liberality and not confined even more narrowly than if it were a criminal statute. If the inquiry is

fairly within the terms and spirit of the authorizing resolution, it should not be struck down for lack of detailed specificity in the charter. Unnecessary and unreasonable burdens should not be placed on Congress in the creation either of standing committees or of special committees.

2. In its bearing on the degree of specificity required to authorize legislative inquiry into a particular subject matter, this case is related to two cases already before this Court from the Court of Appeals for the District of Columbia Circuit, involving contempt convictions of witnesses appearing before the House Un-American Activities Committee (*Barenblatt* v. *United States*, 252 F. 2d 129, No. 35, this Term, certiorari granted, 356 U. S. 929) and the Senate Internal Security Subcommittee (*Flaxer* v. *United States*, No. 60, this Term, certiorari granted, June 9, 1958). While those two cases involve primarily the question whether the witnesses were fairly informed of the subject matter under inquiry and the pertinency of the questions asked, they also raise issues as to the scope and extent of the inquiry permitted to these Committees under their authorizing resolutions. In view of this Court's evidenced wish to explore that subject, and because we believe that the instant decision of the Court of Appeals improperly restricts the jurisdiction of a major standing committee of the Senate and may well have broad repercussions in hobbling the investigations of Congressional committees generally, we submit that the decision below should likewise be reviewed by this Court.

CONCLUSION

For these reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

J. LEE RANKIN,
Solicitor General.
MALCOLM ANDERSON,
Assistant Attorney General.
BEATRICE ROSENBERG,
JEROME M. FEIT,
Attorneys.

JULY 1958.

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14145

FRANK BREWSTER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Decided April 15, 1958

Mr. John K. Pickens, with whom Messrs. Jerry N. Griffin, Donald S. Dawson and M. Joseph Stoutenburgh were on the brief, for appellant.

Mr. William Hitz, Assistant United States Attorney, with whom Messrs. Oliver Gasch, United States Attorney, and Lewis Carroll, Assistant United States Attorney, were on the brief, for appellee.

Before REED, Associate Justice of the Supreme Court, retired,* and PRETTYMAN and BAZELON, Circuit Judges.

BAZELON, *Circuit Judge:* Appellant was convicted under 2 U. S. C. § 192 of 31 charges of contempt of Congress committed before the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations.

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*Sitting by designation pursuant to the provisions of 28 U. S. C. § 294 (a).

At the time of the alleged offenses, appellant held three union offices. He was president of Joint Council No. 28, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers; chairman of the Western Conference of Teamsters; and president of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 174. The charges covered by his refusals (1) to produce the subpenaed books and records of Joint Council No. 28 and the Western Conference of Teamsters; (2) to examine and identify financial reports filed with the Labor Department by Joint Council No. 28 and Local 174 pursuant to the requirements of law; (3) to answer questions relating to the accuracy of these reports and of reports filed with the Bureau of Internal Revenue pursuant to the requirements of law; and (4) to answer questions as to (a) what other reasons appellant had, beside lack of Subcommittee jurisdiction, for his refusal to give information and (b) certain union instructions on the invocation of constitutional privileges.

Appellant's chief contention on this appeal, as it was before the Committee and before the District Court, is that the Committee lacked jurisdiction to conduct the inquiry into his and the union's activities and therefore could delegate no such authority to its Subcommittee.

The Committee on Government Operations, at first called the Committee on Expenditures in the Executive Departments, was one of the sixteen permanent Senate Committees created by the Legislative Reorganization Act of 1946[1] to replace the "crazy-quilt pattern" of the Senate's then existing 33 committees.[2] The Act sought to "define the jurisdiction of each reorganized committee so as to avoid jurisdictional dis-

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[1] 60 Stat. 812 *et seq.*

[2] S. Rep. No. 1400, 79th Cong., 2d Sess. 2 (1946).

putes between them" as had occurred with the supplanted committees.[3] Section 102 (1) (g) provided for the Committee:

> (g) (1) Committee on Expenditures in the Executive Departments, to consist of thirteen Senators, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:
>
> (A) Budget and accounting measures, other than appropriations.
>
> (B) Reorganizations in the executive branch of the Government.
>
> (2) Such committee shall have the duty of—
>
> (A) receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the Senate as it deems necessary or desirable in connection with the subject matter of such reports;
>
> (B) *studying the operation of Government activities at all levels with a view to determining its economy and efficiency;*
>
> (C) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government;
>
> (D) studying intergovernmental relationships between the United States and the States and municipalities, and between the United States and international organizations of which the United States is a member.[4]

To sustain the authority asserted here on behalf of the Committee, appellee relies primarily on subdivision (g) (2) (B), *i. e.*, upon the Committee's duty of "studying the operation of Government activities at all levels with a view to determining its economy and efficiency." This duty, says appellee, required the Committee "to determine whether Government activ-

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[3] *Id.* at 3.

[4] 60 STAT. 816, emphasis supplied.

ities in the labor union field were operating with economy and efficieney."

According to appellee, "Government activities in the labor union field" stem from two things: first, the requirement of the Labor Management Relations Act of 1947 that union organizations file financial and other reports with the Labor Department as a condition to invoking the processes of the National Labor Relations Board;[5] second, the grant of income tax exemptions to labor organizations.[6] Appellee concludes:

> It is clear that the misuse of union funds and the concealment thereof by false reports are evils whose existence will determine the economy and the efficiency of the Government activities in these labor union fields.

To investigate these evils, the Subcommittee first heard testimony from officials of the Labor Department, the National Labor Relations Board and the Treasury Department concerning the operation of the laws requiring union organization reports. Then it sought information from appellant to determine whether there was misuse of union funds and concealment of such misuse in the reports required by law. At a Subcommittee hearing on January 19, 1957, appellant refused to give this information, on the sole ground that the Subcommittee lacked jurisdiction to make such an inquiry.

It is conceded that Congress has the power to conduct such an inquiry. The question is whether, by the Legislative Reorganization Act of 1946, it gave

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[5] If union officials misuse union funds and file false reports, it is argued, the purposes of the Labor Management Relations Act are thwarted.

[6] As the Government puts it: "If union officials misuse union funds, the union is not deserving of the bonanza of tax exemption, and the misused funds will certainly not be declared as individual taxable income by miscreant union officials."

this power to the Committee of Government Operations with sufficient clarity and certainty to invoke "the aid of the federal judicial system in protecting itself against contumacious conduct." *Watkins* v. *United States*, 354 U. S. 178, 207 (1957). We think not.

It is not at all clear that the power to investigate the misuse of union funds inheres in the Committee's duty, under § 102 (1) (g) of the Act, of "studying the operation of Government activities at all levels with a view to determining its economy and efficiency." We have grave doubts that, merely because unions are required to file reports, their activities or the misuse of their funds or the concealment of such use become "Government activities." We would have the same doubts about whether the requirement that corporations file tax returns makes all corporate affairs "Government activities." Cf. *United States* v. *Kamin*, 136 F. Supp. 791, 802 (D. Mass. 1956).

According to the logic of appellee's view, the Committee would have authority, under its duty to study the "economy and efficiency" of "the operation of Government activities," to investigate all persons and companies subject to laws dealing with internal revenue, transportation, communications, banking, agriculture, shipping, subversive activities, immigration, health, international relations, etc., etc. This, for all practical purposes, would give the Committee on Government Operations jurisdiction to investigate virtually every activity engaged in by every person in the land. It would at least give the Committee a legislative oversight jurisdiction of the executive departments, not only overlapping in blanket fashion the other fifteen permanent Senate committees, but perhaps extending beyond them. While some unavoidable overlap might be viewed as within the contemplation of the Legislative Reorganization Act of 1946, we

can hardly say the same for the vast overlap which inheres in the Committee's assertion of power here.[7]

We therefore reverse the judgment of conviction and remand the case to the District Court with instructions to dismiss the indictment.

So ordered.

ASSOCIATE JUSTICE REED, *retired, dissenting:* The power of Congress, through its committees to investigate the operation of Government activities, is unquestioned when the facts sought are to inform Congress with a view to legislation. Appellant's objection is that Congress had not authorized this committee to investigate the efficiency of the governmental processes.

This is not a situation such as *Watkins* v. *United States,* 354 U. S. 178, where the purpose of the investigation was not clear, nor of *United States* v. *Rumely,* 345 U. S. 41, where the meaning of the phrase "lobbying activities" called for definition. Here the Committee had the duty of studying the efficiency of the operation of Government activities at all levels. In directing its investigation toward certain required reports of labor unions to the Government, it was

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[7] The Senate strongly indicated its belief that the Committee on Government Operations was without power to conduct the inquiry. When the question of this Committee's jurisdiction was raised before the Senate, it acted, on January 30, 1957, to create the Select Committee on Improper Activities in the Labor or Management Field, authorized to investigate criminal and other improper activities in the labor or management field. S. Res. 74, 85th Cong., 1st Sess. Senator McClellan, Chairman of the Committee on Government Operations and Chairman of its Subcommittee on Investigations, was made Chairman of the Select Committee. On February 15, 1957, appellant turned over the subpenaed records to the staff of the Select Committee and on March 15, 19, 20 and 21, 1957, he testified and answered questions before the Select Committee.

within the scope of its authority. Legislation to protect union funds more fully might be required.

Congress alone has the authority to decide the scope of a committee's jurisdiction. It is only when the scope of the authority granted is uncertain or beyond constitutional power that the judiciary may intervene to protect a contumacious witness. It is conceded by the opinion that only a narrower resolution was required to call for replies to the questions asked.

Such judicial supervision of legislative procedure as this decision imposes is, in my opinion, not only an invasion of legislative prerogatives but hampers congressional investigations. Congress must empower its committees by general language to make needed investigations. The witness may be protected by questions narrowed so as fairly to inform him of the information desired. *Watkins* v. *United States*, 354 U. S. 178, 215.

I would affirm this conviction.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term, 1958. Criminal 289–57

No. 14,145

FRANK BREWSTER, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE

Filed April 15, 1958.

Appeal from the United States District Court for the District of Columbia.

Before: Reed, Associate Justice of the Supreme Court, retired, and Prettyman and Bazelon, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with instructions to dismiss the indictment.

Dated: April 15, 1958.

Per Circuit Judge BAZELON.

Separate dissenting opinion by Mr. Justice Reed.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term, 1958

No. 14,145

FRANK BREWSTER, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE.

Filed: May 27, 1958.

Before: Edgerton, Chief Judge, Prettyman, Wilbur K. Miller, Bazelon, Fahy, Washington, Danaher, Bastian and Burger, Circuit Judges, in Chambers.

ORDER

Upon consideration of appellee's petition for rehearing en banc and of appellant's answer, it is

ORDERED by the court that the aforesaid petition be, and it is hereby, denied.

Per Curiam.

Dated: May 27, 1958.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14117

NUGENT LAPOMA, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Decided April 15, 1958

Mr. John K. Pickens, with whom Messrs. Jerry N. Griffin, Donald S. Dawson and M. Joseph Stoutenburgh were on the brief, for appellant.

Mr. William Hitz, Assistant United States Attorney, with whom Messrs. Oliver Gasch, United States Attorney, and Lewis Carroll, Assistant United States Attorney, were on the brief, for appellee.

Before REED, Associate Justice of the Supreme Court, retired,* and PRETTYMAN and BAZELON, Circuit Judges.

Per Curiam: This appeal, like *Brewster* v. *United States*, No. 14145, decided today, is from a conviction for contempt of Congress, 2 U. S. C. § 192, and in-

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* Sitting by designation pursuant to the provisions of 28 U. S. C. § 294 (a).

volves the question of the jurisdiction of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations. On the authority of Brewster the judgment of conviction herein is reversed and the case is remanded to the District Court with directions to dismiss the indictment.

So Ordered.

Associate Justice Reed, retired, dissents for the reasons stated in No. 14,145—*Brewster v. United States of America.*

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term, 1958. Criminal 290-57

No. 14,117

NUGENT LAPOMA, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Filed April 15, 1958.

Appeal from the United States District Court for the District of Columbia.

Before: Reed, Associate Justice of the Supreme Court, retired, and Prettyman and Bazelon, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that, on the authority of *Brew-*

ster v. *United States*, No. 14,145, decided today, the judgment of the said District Court appealed from in this cause be, and it is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to dismiss the indictment.

Dated April 15, 1958.

Per Curiam.

Mr. Justice Reed dissents for the reasons stated in his dissent in No. 14,145, *Brewster* v. *United States of America*.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term, 1958

No. 14,117

NUGENT LAPOMA, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Filed May 27, 1958.

Before: Edgerton, Chief Judge, Prettyman, Wilbur K. Miller, Bazelon, Fahy, Washington, Danaher, Bastian and Burger, Circuit Judges, in Chambers.

ORDER

Upon consideration of appellee's petition for rehearing en banc and of appellant's answer, it is

Ordered by the court that the aforesaid petition be, and it is hereby, denied.

Per Curiam.

Dated: May 27, 1958.

U. S. GOVERNMENT PRINTING OFFICE 1958